

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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NOV 13 2001

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Quanah, Archer City, Converse, Flatonia,  
Georgetown, Ingram, Keller, Knox City,  
Lakeway, Lago Vista, Llano, McQueeney,  
Nolanville, San Antonio, Seymour, Waco and  
Wellington, Texas, and Ardmore, Durant,  
Elk City, Healdton, Lawton and Purcell,  
Oklahoma.)

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 00-148  
RM-9939  
RM-10198

TO: John A. Karousos, Chief  
Allocations Branch, Policy and Rules Division  
Mass Media Bureau

### RESPONSE TO REQUEST FOR SUPPLEMENTAL INFORMATION

1. In response to the "Request for Supplemental Information" ("Request") released by the Chief, Allocations Branch, on September 28, 2001 in the above-captioned matter, Elgin FM Limited Partnership and Charles Crawford ("Elgin FM/Crawford") hereby provide the following information.

2. The Request sought "information as to the exact location of the proposed transmitter site for the proposed Channel 247C1 allotment at Lakeway, Texas, and whether this site . . . can be use as a transmitter site." Request at ¶2. According to the Counterproposal <sup>1/</sup> in which the Lakeway allotment was first advanced, the coordinates for

<sup>1/</sup> The Counterproponents include First Broadcasting Company, L.P., Rawhide Radio, L.L.C., Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. ("Joint Parties").

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JDE

the proposed Lakeway transmitter site are 30-18-27 N and 97-46-46 W.

3. In order to determine the "exact location" of the site in question, Elgin FM/Crawford retained Canales, Martinez & Nash Surveying Company ("CM&N") to depict the location of the coordinates in question on readable maps. The maps generated by CM&N in response are included as Attachment A hereto. These include four separate maps. The first depicts the site in datum WGS84; the second depicts the site in datum NAD27; the third depicts the site on a street map; and the fourth depicts the site on a Texas Quadrangle map.<sup>2/</sup> All of these maps demonstrate that the site described by the proposed coordinates is in, or immediately adjacent to, the Colorado River which runs through Austin. This further confirms the assertion -- which was initially advanced by Elgin FM/Crawford in their Reply Comments herein and which was separately confirmed by the Commission's own engineering review (*see* Request at ¶2) -- that the site is located in, or at the very edge of, the river.

4. The location of the site relative to the river is independently confirmed in the Attachment B hereto, which consists of an Engineering Statement and map prepared by John Mullaney, an experienced broadcast engineering consultant.

5. Because of its location in, or immediately next to, water, the Lakeway site is unsuitable. *See Clewiston, FL et al.*, 10 FCC Rcd 6548, 6550, ¶10 (Policy and Rules Division 1995) ("We have consistently rejected any proposed reference sites that fall within bodies of water.").

6. Moreover, that site is not, as a practical matter, available for use as a tower


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<sup>2/</sup> Elgin FM/Crawford are providing multiple depictions of the site to eliminate any doubt as to the actual location of the site.

site even if the site were suitable. Elgin FM/Crawford have conferred with a representative of the Land Use and Transportation Department of the City of Austin, and have been advised that the area is a Critical Water Quality Zone, which is subject to special zoning and land use considerations which would ordinarily preclude construction of a tower. *See Attachment C* hereto. *See also, e.g.,* Section 25-8-261 of the Austin, Texas Code of Ordinances. Thus, even if the Commission were to determine that the site is actually on the river bank, rather than in the river itself, the site would still not be available for use as a transmitter site.

7. It is therefore abundantly clear that the Lakeway site specified in the Joint Parties' Counterproposal is neither suitable nor available for use as a transmitter site.

Respectfully submitted,

  
/s/ Gene A. Bechtel  
Gene A. Bechtel

9312 Wooden Bridge Road  
Potomac, Maryland 20854  
Telephone: 301-340-6811  
Telecopier: 301-762-0156 <sup>3/</sup>

Counsel for Elgin FM Limited Partnership and  
Charles Crawford

November 13, 2001

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<sup>3/</sup> Interim residence address pending establishment of new District of Columbia office. D.C. Bar No. 620 (October 1958); not admitted to practice in Maryland.

ATTACHMENT A



9027 Northgate Blvd., Suite 141, Austin, Texas 78758-6453

Office: (512) 834-1500 Fax: (512) 834-1759

E-mail: cmnsurvey@earthlink.net

**CANALES, MARTINEZ & NASH SURVEYING COMPANY**

October 9, 2001

Joe Garcia, Jr.  
Dynamic Radio  
7524 North Lamar  
Austin, Texas 78752

Re: Location of : North 30° 18' 27"  
West 97° 46' 46"

Dear Mr. Garcia:

Based on the Latitude and Longitude provide by the client and denoted on the Federal Communications Commission Form DA 01-2238 entitled "REQUEST FOR SUPPLEMENTAL INFORMATION" with a released date of September 28, 2001, Canales, Martinez and Nash Surveying Company (CM&N) is providing the location of the Latitude and Longitude on the following maps. These maps provided represent a common standard that is used for the Professional Land Surveyor to denote location of Texas State Plane coordinate values.

- 1.) Delorme TopoQuad map in datum WGS84 (see exhibit).
- 2.) Delorme TopoQuad map in datum NAD27 (see exhibit).
- 3.) Delorme Street Atlas USA (see exhibit).
- 4.) Texas Quadrangle map "Austin West, Tex., dated 1988.

Respectfully,

Juan M. Canales, Jr.  
Texas Registered Professional Land Surveyor No. 4453  
President and COO

16584



Copyright © 1998 National Geographic, All Rights Reserved. Scale: 1 : 62,500. Details: 1:50,000.

11027

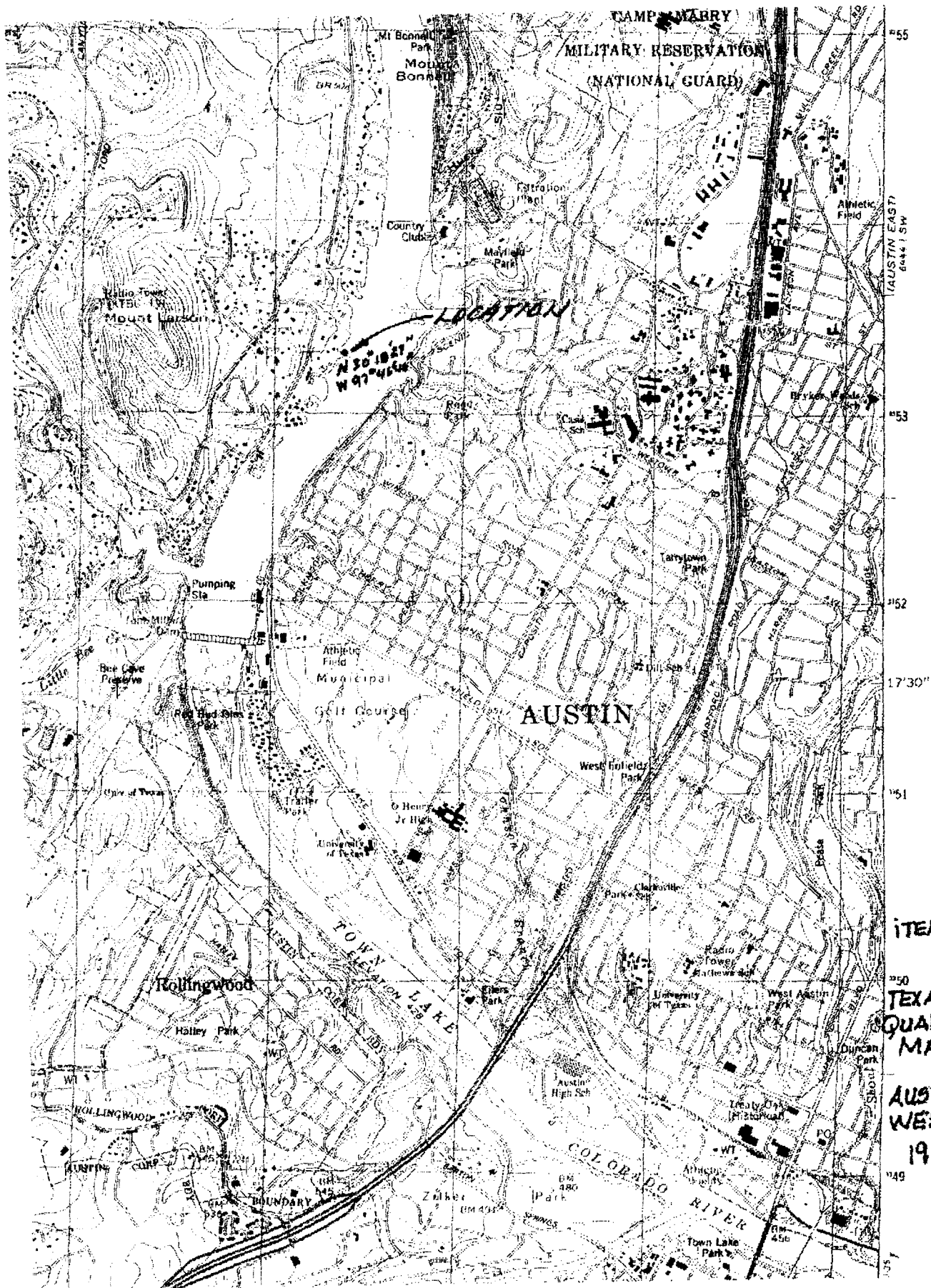


1:50,000 Scale: 1:50,000 Date: 1988 Source: USGS

30-18-27 97-46-46







ITEM) 4-

TEXAS  
QUADRANG  
MAP

AUSTIN  
WEST  
1988

ATTACHMENT B

**MULLANEY ENGINEERING, INC.**

9049 SHADY GROVE COURT  
GAITHERSBURG, MD 20877

**ENGINEERING EXHIBIT EE-RM:**

**SUPPLEMENTAL INFORMATION  
MM DOCKET 00-148  
AMENDMENT OF FM TABLE OF ALLOTMENTS  
IN TEXAS & OKLAHOMA**

**NOVEMBER 12, 2001**

**ENGINEERING STATEMENT IN SUPPORT OF  
SUPPLEMENTAL INFORMATION REQUESTED BY FCC  
CONCERNING THE REFERENCE POINT FOR  
CH. 247C1 - LAKEWAY, TEXAS**

Prepared on Behalf of  
Elgin FM Limited Partnership

**ORIGINAL**

**ENGINEERING EXHIBIT EE-RM:**

**SUPPLEMENTAL INFORMATION  
MM DOCKET 00-148  
AMENDMENT OF FM TABLE OF ALLOTMENTS  
IN TEXAS & OKLAHOMA**

**TABLE OF CONTENTS:**

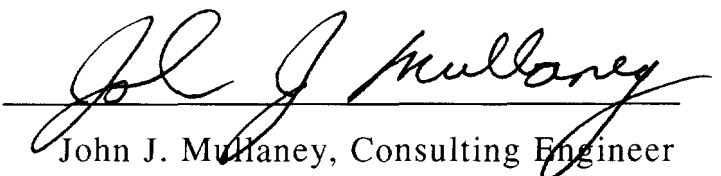
1. Declaration of Engineer
2. Narrative Statement
3. Figure 1, Topographic Map - Ch. 247C1 Lakeway, Texas.

## Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by Elgin FM Limited Partnership, to prepare the instant engineering exhibit in support of a Request for Supplemental Information in MM Docket 00-148.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.



John J. Mullaney, Consulting Engineer

Executed on the 12th day of November 2001.

**ENGINEERING EXHIBIT EE-RM:**

**SUPPLEMENTAL INFORMATION  
MM DOCKET 00-148  
AMENDMENT OF FM TABLE OF ALLOTMENTS  
IN TEXAS & OKLAHOMA**

**NARRATIVE STATEMENT:**

This engineering statement has been prepared on behalf of Elgin FM Limited Partnership. The purpose of this statement is to support supplemental information in MM Docket 00-148 concerning the location of the reference point for Channel 247C1 at Lakeway, Texas.

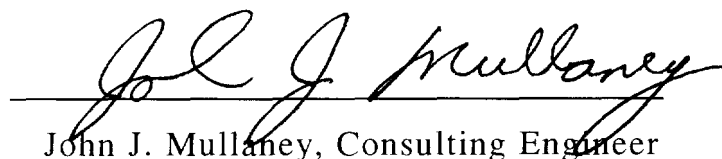
**Ch. 247C1 - Lakeway, Texas**

The Lakeway proposal was filed as a counterproposal in MM Docket 00-148 and it specified the following NAD-1927 coordinates:

Latitude: 30° 18' 27"  
Longitude: 97° 46' 46"

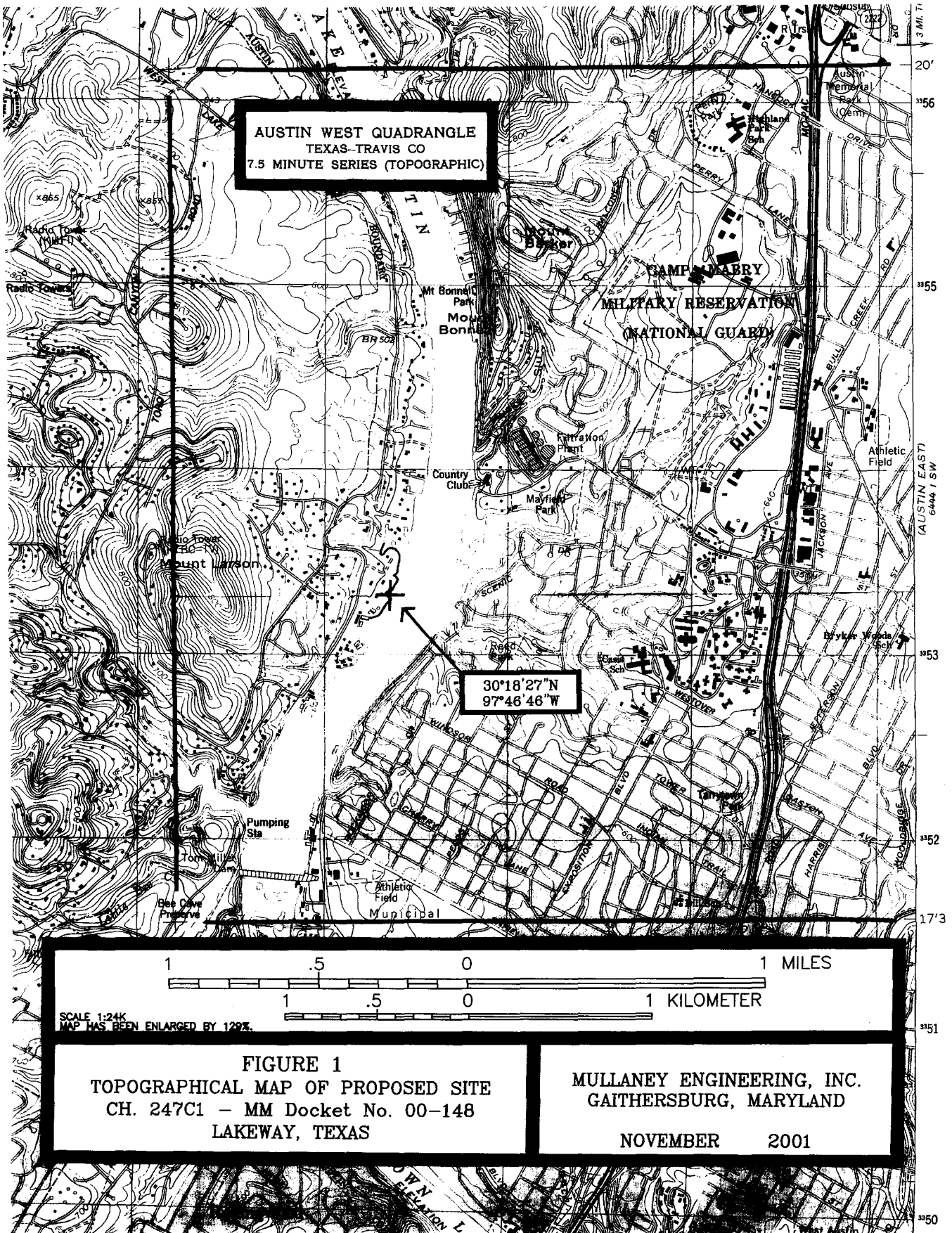
Figure 1 is an enlarged view of the U.S.G.S. 7.5' topographic map entitled "Austin West". The proposed reference point for Ch. 247C1 was plotted on the enlarged color copy of Austin West map and also on the original map itself to insure a distortion free illustration. The

bank of the Colorado River has been darkened along the area in question. Based upon this map, it was determined that the reference point for Ch. 247C1 is either in the water or immediately on the western bank of the Colorado River.



John J. Mullaney, Consulting Engineer

November 12, 2001.





ATTACHMENT C

Elgin FM Limited Partnership  
7524 North Lamar Blvd.  
Austin, Texas 78752

Dear Sir,

*Consent  
Planning approved*

Approval to construct a communication tower of this size requires a site plan. To date no request has been made for approval of a site plan at the below specified coordinates. Historically, no permits have been granted that would allow a tower to be built in Lake Austin, which is part the Colorado River, and subject to the ordinance jurisdiction of the city of Austin. A site plan must be approved before a permit to construct the tower is issued. Pursuant to the feasibility of approval, an informal meeting with appropriate professional expertise within the Development Assistance Center was conducted on November 5, 2001. The results of this meeting concluded that a site plan for a tower located at coordinates N 30 18 27, W97 46 46 would most likely not meet the requirements for approval based on the following Austin, Texas Code of Ordinances, Lake Austin is zoned for public use and approval would require review by the Planning Commission of Austin. This review would include comments from the property owners in the surrounding area, which is primarily zoned residential (SF & MF). A special waiver would be required in any variance of the code.

Types of development that are allowed along the shoreline and in Lake Austin, which includes the above coordinates, do not include towers. This area is a CRITICAL WATER QUALITY ZONE. Acceptable uses are listed in the code as follows:

**§ 25-8-261 CRITICAL WATER QUALITY ZONE DEVELOPMENT.**

- (A) A fence that does not obstruct flood flows is permitted in a critical water quality zone.
- (B) A public or private park, golf course, or open space, other than a parking lot, is permitted in a critical water quality zone if a program of fertilizer, pesticide, and herbicide use is approved by the Watershed Protection and Development Review Department.
- (C) Along Lake Travis, Lake Austin, or Town Lake:
  - (1) A boat dock, pier, wharf, or marina and necessary access and appurtenances, is permitted in a critical water quality zone;
  - (2) A utility line may cross a critical water quality zone. In the Barton Springs Zone, approval by the director is required for a utility line crossing.

In addition, any development in and around Lake Austin would require review by the Austin Parks and Recreation Department. A gain this type of development would not support the lake's intended use. Their comments would be included in the approval process, as explained in the following ordinance:

**§ 25-7-63 REVIEW BY PARKS AND RECREATION BOARD OF CERTAIN SITE PLANS.**

- (C) The board shall review and comment on:
  - (1) The navigational safety of the proposed development; and
  - (2) The effect of the development on the recreational and natural character of the lake.

Below is the criteria for approval of site plans, please note sub-paragraph (b).

**§ 25-7-61 CRITERIA FOR APPROVAL OF PLATS, CONSTRUCTION PLANS, AND SITE PLANS.**

- (A) A final plat, subdivision construction plan, or site plan may not be approved unless:
  - (3) The proposed development:
- (a) will not result in additional identifiable adverse flooding on other property;
- (b) to the greatest extent feasible, preserves the natural and traditional character of the land and the wetlands;

City of Austin Planner  
Watershed Protection and Development Review Department  
Land Use and Transportation

Carl McClendon, AICP

*CCM - 11/8/01*

CERTIFICATE OF SERVICE

I, Gene A. Bechtel, hereby certify that on this 13th day of November, 2001, I caused copies of the foregoing "Response to Request for Supplemental Information" to be hand delivered (as indicated below) or placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

David P. Garland, President  
Stargazer Broadcasting, Inc.  
P.O. Box 519  
Woodville, Texas 75979


Maurice Salsa  
5615 Evergreen Valley Drive  
Kingwood, Texas 77345

Bryan A. King  
BK Radio  
1809 Lightsey Road  
Austin, Texas 78704

Matthew L. Leibowitz, Esq.  
Leibowitz & Associates, P.A.  
One SE Third Avenue, Suite 1450  
Miami, Florida 33131  
Counsel for Next Media Licensing, Inc.

Gregory L. Masters, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
Counsel for Capstar TX LP and  
Clear Channel Broadcast Licenses, Inc.

Mark N. Lipp, Esq.  
Shook, Hardy & Bacon, L.L.P.  
600 14th Street, N.W., Suite 800  
Washington, D.C. 20005  
Counsel for First Broadcasting Company,  
L.P. and Rawhide Radio, L.L.C.

/s/   
Gene A. Bechtel  
Gene A. Bechtel